

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
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5 In the Matter of:

6
7 GAWKER MEDIA, LLC, Case No. 16-11700-smb

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9 Debtor.
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13 U.S. Bankruptcy Court
14 One Bowling Green
15 New York, New York
16

17 August 18, 2016
18 2:04 PM
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20 B E F O R E :

21 HON STUART M. BERNSTEIN
22 U.S. BANKRUPTCY JUDGE
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1 Hearing re: Case Conference

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3 Hearing re: Debtors' Application Pursuant to Sections
4 327(e), 328(a), and 330 of the Bankruptcy Code, Bankruptcy
5 Rules 2014 and 2016, and Local Rules 2014-1 and 2016-1 for
6 Entry of an Order Authorizing the Retention and Employment
7 of Brannock & Humphries as Special Litigation Counsel
8 Effective Nunc Pro Tunc to the Petition Date [Docket No.
9 130]

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11 Hearing re: Debtors' Application Pursuant to Sections
12 327(e), 328(a), and 330 of the Bankruptcy Code, Bankruptcy
13 Rules 2014 and 2016, and Local Rules 2014-1 and 2016-1 for
14 Entry of an Order Authorizing the Retention and Employment
15 of Levine Sullivan Koch & Schulz, LLP as Special Litigation
16 Counsel Effective Nunc Pro Tunc to the Petition Date [Docket
17 No. 133]

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19 Hearing re: Debtors' Application Pursuant to Sections
20 327(e), 328(a), and 330 of the Bankruptcy Code, Bankruptcy
21 Rules 2014 and 2016, and Local Rules 2014-1 and 2016-1 for
22 Entry of an Order Authorizing the Retention and Employment
23 of Thomas & LoCicero PL as Special Litigation Counsel
24 Effective Nunc Pro Tunc to the Petition Date [Docket No.
25 133]

1 Hearing re: Debtors Motion for (I) An Order (A) Authorizing
2 and Approving Bidding Procedures, Breakup Fee and Expense
3 Reimbursement, (B) Authorizing and Approving The Debtors
4 Entry Into and Assumption of The Stalking Horse Asset
5 Purchase Agreement, (C) Approving Notice Procedures,
6 (D)Scheduling A Sale Hearing and (E) Approving Procedures
7 For Assumption and Assignment of Certain Contracts and
8 Leases And Determining Cure Amounts and (II) and Order (A)
9 Authorizing The Sale Of Substantially All of The Debtors
10 Assets Free and Clear of All Claims, Liens, Rights,
11 Interests And Encumbrances, (B) Approving The Asset Purchase
12 Agreement and (C) Authorizing The Debtors to Assume and
13 Assign Certain Executory Contracts And Unexpired Leases
14 [Docket No. 21]

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25 Transcribed by: Dawn South

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14 GREGG THOMAS, ESQ.

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. Gawker.

3 MR. GALARDI: Good afternoon, Your Honor.

4 THE COURT: Good afternoon.

5 MR. GALARDI: For the record, Greg Galardi on
6 behalf of Gawker Media and the other debtors.

7 Your Honor, we had filed an amended agenda this
8 morning. There are not new matters on the agenda, but just
9 certain resolutions, and I'd like to go through the agenda
10 in the order.

11 THE COURT: Go ahead.

12 MR. GALARDI: Your Honor, first Your Honor had
13 asked for a case management conference. I'll be very brief,
14 because I think the proceedings will also advise Your Honor
15 as to where we stand on these cases.

16 But very quickly, Your Honor, today is the day for
17 the -- where we seek Court approval of the sale that was
18 commenced -- the sale process that was commenced on the
19 petition date.

20 As Your Honor is aware from the bid procedures
21 hearing there was a non-solicitation period that ran to
22 early July, and this is about, by my count, 68 or 69 days
23 after Your Honor approved the -- since we filed the day and
24 about 48 days during that process. So we are moving that
25 along.

1 Your Honor is also aware of the litigations and
2 our motion to seek a preliminary injunction.

3 With respect to --

4 THE COURT: Does somebody have a phone?

5 MR. GALARDI: I think they just stepped out, Your
6 Honor.

7 THE COURT: Go ahead.

8 MR. GALARDI: Your Honor, with respect to the
9 litigations and the stay in effect, as Your Honor knows we
10 entered into a stipulation, the parties are here that will
11 -- that had the stay in certain matters go to September 3rd,
12 there's a different closing date. I've been in contact with
13 counsel for those two plaintiffs. They will likely extend
14 it. That matter was complicated by certain of the things on
15 the docket that we will talk about.

16 We have not lifted the stay yet with respect to
17 the underlying Bilao (ph) litigation, but given that we're
18 going to -- looks like we'll -- if Your Honor approves we'll
19 have a sale closing somewhere around September 9th, and
20 that's sort of our time period for thinking about lifting
21 the stay and getting to what I'll the second phrase of this
22 case.

23 Your Honor is also aware that in all of that there
24 were proceedings -- I think Your Honor is aware -- that
25 there were proceedings once Your Honor did not extend the

1 preliminary injunction. Mr. Denton has filed Chapter 11, I
2 think that case is actually pending before Your Honor, and
3 there were proceedings down in Florida. Those proceedings
4 are still going forward I think with respect to Mr. Delario
5 (ph).

6 Finally, Your Honor, and probably most important
7 for where we go from here, assuming that Your Honor does in
8 fact approve the sale today, there will be significant
9 proceeds. I think Your Honor may know the amount of the
10 purchase price, we will walk through that with the
11 testimony.

12 But very important with respect to those proceeds
13 that -- what I've said begins, you know, phrase two of this
14 case. The debtors that are selling the assets are Gawker
15 Media, LLC and Kinja, Kft. There will be or unless resolved
16 an allocation of proceeds issues. You will see in the
17 papers that all parties are reserving their rights with
18 respect to allocations and how those proceeds are allocated.

19 I did send the committee a meet and confer, we've
20 known about this issue since the first day, so once the
21 proceeds are in we'll hope to try to reach a consensual
22 resolution and avoid spending a lot of those proceeds on
23 litigation. No guarantees.

24 And then there is, as Your Honor is aware, that
25 litigation and how that litigation with Mr. Bilao and the

1 appeal plays into how those proceeds are ultimately
2 resolved.

3 After this, Your Honor, and there'll be testimony
4 today with respect to a liquidating plan, because there will
5 be enough proceeds. Just to put that in context and then
6 I'm going to turn it over to my partner, Mr. Martin, with
7 respect to the retentions.

8 Your Honor, as we sit here today I believe there's
9 roughly \$40 million of secured debt outstanding. The
10 proceeds from the sale, as Your Honor may have seen in the
11 transcript and we can talk about that transcript, we got a
12 cash purchase price of \$135 million, so there will be
13 obviously sufficient proceeds to pay the secured debt, there
14 will be proceeds for unsecured creditors, how those all get
15 distributed will be ultimately a result of the allocation
16 and to whom those proceeds go.

17 Your Honor, what I would do now is the next three
18 matters on the agenda, subject to Your Honor's preference,
19 the next three matters are three retention motions that I
20 think were originally scheduled for early August this month,
21 maybe August 3rd, got pushed to August 9th.

22 We have engaged in conversations and negotiations
23 with both the committee and the creditors and the U.S.
24 Trustee regarding a resolution.

25 I can turn the podium over to my partner,

1 Mr. Martin, because we are pleased to announce that there is
2 a similar -- subject to Your Honor's approval, a similar
3 resolution with respect to all three of those.

4 THE COURT: Sure.

5 MR. MARTIN: Good afternoon, Your Honor.

6 THE COURT: Good afternoon.

7 MR. MARTIN: Ross Martin, Ropes & Gray for the
8 debtors and debtors in possession.

9 As Mr. Galardi indicated, we have of course on
10 retention matters, all things subject to the Court's
11 authority, a consensual resolution with the creditors'
12 committee and the United States Trustee on three
13 applications for retention of special counsel under
14 Bankruptcy Code Section 327(e). Those counsel are all
15 involved in the underlying lawsuits that the Court is aware
16 of.

17 And if I could, Your Honor, approach. The issues
18 that were raised by the United States Trustee and the
19 committee all arise from the fact that special counsel are
20 operating in joint representations with non-debtors in this
21 case. If I could approach, Your Honor, I have redlines.

22 THE COURT: Sure. Thank you.

23 MR. MARTIN: I don't think these changes will take
24 very long to walk through, Your Honor, and I really propose
25 mostly to walk through the first with respect to Brannock &

1 Humphries, because the changes are all similar with one
2 exception that I will point out.

3 Your Honor, as an overview, there were really two
4 issues. One, the question of conflicts or potential
5 conflicts in the joint representations and allocation of
6 fees and the changes. I'll go to that.

7 So if you would -- if I could direct the Court's
8 attention to the redline for the Brannock & Humphries order,
9 and the changes I'll walk through here are the same in all
10 three orders, Your Honor.

11 Paragraph 4, which is new, simply clarifies that
12 -- and acknowledges that there is a joint representation of
13 non-debtor defendants and that the special counsel retention
14 could include a claims litigation in this court, to the
15 extent obviously that these parties are creditors and
16 there's a claim objection or other claims litigation, it may
17 behoove the estate on those specialized issues of the size
18 of those claims use special counsel with respect to that.
19 So we wanted to make sure that was clear.

20 Paragraph 6 is -- addresses allocation of fees
21 among the clients -- the debtor and non-debtor clients, and
22 this is in agreement with the committee.

23 The allocation for joint representation matters,
24 which is the -- essentially the bulk of the litigation, some
25 of which is going on in state court, subject to the stay, is

1 85 percent of the fees to these bankruptcy estates, 100
2 percent of the expenses to these bankruptcy estates, and 15
3 percent of the fees to the non-debtor defendants.

4 The arrangement of -- this Court is not being
5 asked to approve what the -- today is not being asked to
6 approve what the arrangement is among the non-debtor
7 defendants, I want to make that clear, they'll have to reach
8 their own agreement, and in the case of Mr. Denton, since he
9 is in Chapter 11, that too, and the order reflects this,
10 would obviously be subject to this Court's review in that
11 case.

12 THE COURT: Well I was going to raise that. For
13 instance, you allocate 15 percent to non-debtor defendants,
14 and might not the Denton estate at this point say, no that's
15 an unfair allocation and we don't agree to it and we want
16 separate lawyers?

17 MR. MARTIN: And they could, Your Honor. And all
18 this does is cap the amount that this estate is responsible
19 for at the 85 percent and the 100 percent of expenses.

20 THE COURT: All right. Well it says the non-
21 debtor defendants shall be liable for the remaining 15
22 percent.

23 MR. MARTIN: It then goes on to say which shall be
24 due pursuant to arrangements with those, subject to
25 bankruptcy court approval required in any such case.

1 THE COURT: Maybe you should say the debtor -- the
2 non-debtor defendants shall not be liable for the remaining
3 15 percent and shall be borne by the other debtors or other
4 non-debtor defendants to the extent they are approved by the
5 Court or approval as necessary. I mean not approving that,
6 for example, Mr. Denton who now has his own Chapter 11 case
7 is liable for 15 percent of the fees.

8 MR. MARTIN: That's absolutely correct, Your
9 Honor. We attempted to pick that up in the parenthetical
10 that I think is seven lines down in paragraph 6, subject to
11 any bankruptcy court approvals required --

12 THE COURT: All right.

13 MR. MARTIN: -- and any non-debtor defendants.
14 We're obviously happy to change the language or have the
15 Court --

16 THE COURT: All right. Is a representative of the
17 Denton estate here?

18 MR. MARTIN: I don't believe so, Your Honor.

19 MR. GALARDI: He is represented, but he is not
20 here today.

21 THE COURT: Okay.

22 MR. MARTIN: That certainly was not going to be an
23 issue that was going to be addressed today, and we
24 understood that.

25 The other item here, Your Honor, is that as a

1 matter of agreement between the committee and the debtors --
2 and I want to be clear that of course the Court -- we're not
3 trying to constrain the Court's review of the applications
4 here in any way -- but one of the issues that we wanted to
5 try to get to with the committee was not having the question
6 of what's allocable and what's not allocable devolve into
7 excessive litigation over that question. And so the
8 arrangement we've come to, solely with respect to the
9 committee, is contained here in the sentence that's just
10 below the parenthetical I was pointing the Court to in
11 paragraph 6 where it say:

12 "The parties agree that there shall be a
13 rebuttable presumption that services and expenses
14 incurred in connection with the actions were rendered
15 on behalf of the debtors and non-debtor defendants
16 jointly."

17 So we have a litigation we thought and we came to
18 an agreement with the committee that this was a way to not
19 have that devolve into the minutia and get at the big
20 issues, if there are any.

21 Obviously these counsel are going to have to
22 prepare fee apps all the time, there is no request here to
23 change the reporting requirements as sometimes occurs with
24 non -- or sometimes requested with non-lawyer professionals.
25 So the data should all be there, the information should all

1 be there. And as I mentioned, we are not asking for any --
2 you know, the Court's review is still -- we're not asking
3 for the Court to cabin its review at this point in any way.

4 Your Honor, paragraph 7 confirms that the U.S.
5 Trustee's review is also unfettered by this order, and to
6 the extent they want to raise the allocation issues later
7 they're completely free to do so, as well as any other 330
8 issues and that the committee is free to raise other 330
9 issues other than the allocation issues later.

10 Paragraph 8 --

11 THE COURT: Can't a party in interest raise it?

12 MR. MARTIN: No other parties in interest
13 objected, Your Honor, and we had asked for the estate to pay
14 in full. So our view would be no, because there were no
15 other objections to the retention and the estate paying it.

16 THE COURT: All right.

17 MR. MARTIN: Paragraph 8 again I think at the
18 suggestion of both the committee and the U.S. Trustee
19 confirms that the firms are not to take on matters that are
20 adverse to the estate, and they're all operating, and we
21 have confirmed this with them, under the understanding that
22 if a conflict were to develop they are permitted to withdraw
23 from the non-debtor defendant clients and represent the
24 estate. So the estate is not at risk of losing these
25 lawyers by virtue of the joint representation.

1 And paragraph 9 is simply a reservation of rights
2 with respect to recovering fees from applicable insurance
3 policies. Whether those are available -- whether the stay
4 needs to be lifted to access insurance, all issues for
5 another day, and paragraph 9 is simply a reservation of
6 rights.

7 I'll stop there, Your Honor. I've got one more
8 item in the second order that I want to point to, but those
9 are the changes that are common to all three.

10 THE COURT: Which is the second order, the LS --

11 MR. MARTIN: The -- yes, the LSKS, Your Honor.

12 And this change is at the second half of paragraph 4. And
13 this simply notes that part of their special counsel
14 retention, in addition to the litigation, they provide
15 certain general First Amendment and other publication law
16 related advice that is not subject to allocation because
17 it's not part of the lawsuit, it's directed to the debtors,
18 and we have agreed for this retention to a cap on those
19 amounts. It's 100 percent allocable to the estates and the
20 cap is \$20,000. So I just wanted to call that to the
21 Court's attention.

22 The third, Your Honor, for Thomas & LoCicero is
23 essentially identical to the first Brannock set of changes.

24 Happy to entertain any questions from the Court.

25 THE COURT: The first question I had is why is

1 this nunc pro tunc to the petition date? In theory the
2 debtor has not really been sued or hasn't had to participate
3 in litigation in non-bankruptcy court after the petition
4 date.

5 MR. MARTIN: Your Honor, I can say myself without
6 I think going too far into the details, that of course in
7 planning the case and thinking about the case we have spoken
8 to and taken advantage of the legal services and knowledge
9 that they provide.

10 THE COURT: But specifically Mr. Denton is seeking
11 stays in the Florida court after this case was filed before
12 his case was filed. Is Danem (ph) going to charge this
13 estate for this service?

14 MR. MARTIN: No, Your Honor. That is exactly the
15 issue that we discussed with the committee and that falls
16 within the -- yeah, you've got exactly the issue, Your
17 Honor, on which we set up the rebuttable presumption because
18 that's clearly -- if the estate tried to do that it would --

19 THE COURT: All right.

20 MR. MARTIN: -- not be allocable, that's correct.

21 THE COURT: And the other -- only other thing --
22 well there are two other things.

23 First, I think that the people who are being
24 represented are entitled to know that the debtor comes first
25 if there's a dispute, and that's one of the changes. And

1 there should be some sort of noticing procedure of this
2 final order, particularly on the Denton estate, because it's
3 a separate debtor.

4 MR. MARTIN: Okay, Your Honor.

5 THE COURT: Nothing is going to happen between now
6 and then any way, at least with respect to these debtors.
7 So these should be on notice to the people who are all
8 affected by the representation and maybe should bring a
9 proceeding at that -- one of the noticed proceedings within
10 the Denton estate for that purpose.

11 The other thing that struck me is it seems like
12 the debtor has a lot of counsel in the same cases.

13 MR. MARTIN: A question I wanted to make sure that
14 I could answer, Your Honor. It's quit simple, and I know
15 that the debtors are closely attuned to avoiding
16 duplication.

17 So LSKS is the lead counsel with respect to those
18 matters, but they also have local Florida appellate counsel,
19 which is the Brannock firm. The Thomas LoCicero firm it was
20 local trial counsel. The biggest potential duplication
21 issue is I think between the two local Florida firms, but as
22 in any appeal you want to access trial -- from time to time
23 you -- while the Bilao case, for example, is on appeal, you
24 do want to access the knowledge of the local Florida
25 counsel, you know, who was there at the trial.

1 So I don't anticipate that it's all three firms
2 handling the appeal if it goes forward in Florida, but
3 that's why the three firms and that's what the division is,
4 Your Honor.

5 THE COURT: All right. Does anyone else want to
6 be heard with respect to the proposed retentions?

7 MR. RUSSELL: Very briefly, Your Honor. William
8 Russell, Simpson Thacher & Barlett LLP on behalf of the
9 committee.

10 Your Honor, the modifications that Ropes & Gray
11 went through do resolve our objections.

12 We would note and we had some concern over the
13 duplication of effort issue that you identified, but we have
14 not waived our rights to object on that basis when fee
15 applications are filed. So if these firms do appear to have
16 a duplication of efforts we can still object on that basis.

17 I would like to note that while our objection has
18 been resolved in the reply brief that the debtors filed last
19 night they claimed that the committee was purportedly
20 seeking to disqualify counsel and that it was on the basis
21 of some sort of personal interest, and this is completely
22 unfounded. In fact we weren't seeking to disqualify counsel
23 at all. We made it very clear in our objection and in our
24 negotiations with the debtors and the U.S. Trustee that we
25 had absolutely no objection to these firms continuing to

1 represent the debtors. The committee only sought to ensure
2 on behalf of all unsecured creditors that there were no
3 potential conflicts in the work that counsel was doing, that
4 the debtors were not burdened with an unfair share of the
5 costs of any joint representation, and that the debtors
6 weren't effectively obtaining a backdoor indemnification
7 that would have had the estate pay for legal services for
8 non-debtors that provided for no benefit to the estate,
9 exactly like the -- Mr. Denton's unsuccessful attempt to
10 obtain stay of the personal judgment against in him in
11 Florida.

12 The modifications we negotiated ensure that they
13 obtained, you know, these modifications that protect the
14 interests of unsecured creditors. And again, that was done
15 on behalf of all unsecured creditors generally and not on
16 behalf of any special interest of any committee member and
17 would resent the implication.

18 THE COURT: All right. Thank you. What I'll --
19 yes, sir.

20 MR. MARTIN: I was simply going to make a
21 suggestion, Your Honor, of picking up on the notice question
22 of ten days and we'll --

23 THE COURT: Well I'm most concerned with
24 Mr. Denton, because he's a debtor, and if any of these firms
25 are being retained to represent Mr. Denton, as they are,

1 that would have to occur within the Denton estate at this
2 point under 327(e).

3 MR. MARTIN: Yes, Your Honor.

4 THE COURT: I mean for all I know they may have a
5 different view of things.

6 MR. MARTIN: That's entirely possible, Your Honor.

7 THE COURT: So putting aside Mr. Denton, why don't
8 you present an order on ten days notice to the clients.

9 MR. MARTIN: Absolutely, Your Honor.

10 THE COURT: Other than the debtor obviously, so
11 they know what the deal is.

12 And with respect to Mr. Denton you're going to
13 have to figure out procedurally how to get this before me
14 within the context of the debtor in Chapter 11.

15 MR. MARTIN: I don't think we have to spend time.
16 We'll try to figure that out, Your Honor --

17 THE COURT: Okay.

18 MR. MARTIN: -- with that estate. We don't need
19 to burden the Court today with that.

20 THE COURT: Thank you.

21 MR. GALARDI: And, Your Honor, I would just add on
22 that notice, I believe Mr. Martin mentioned it, but all of
23 the engagement letters have already -- have the normal carve
24 out for joint representations, but we'll let the firms know
25 that -- we'll present a notice and give it to them.

1 THE COURT: Okay.

2 MR. GALLAGHER: Thank you.

3 Your Honor, then what I would now turn to is the
4 -- so that resolves matters one, two, three, and now we come
5 to what is the third part of the hearing, which is the
6 debtor's motion for approval of the sale.

7 Your Honor, first let me just do a little briefly
8 overview of where we stand and what we hope to submit to
9 Your Honor today.

10 First, Your Honor, the documentary evidence that
11 we would ask Your Honor to take judicial notice of and then
12 also to be part of the evidentiary record, there are
13 certificates of service on file, dockets number 136, 166, as
14 well as the cure notice, 115, 128. There's a long list of
15 documents on page 6 of the agenda that have been filed, some
16 of which are notices. They are, we believe, appropriate,
17 except for I know a brief is not part of the evidentiary
18 record, but there is filings, the orders, and we have done a
19 number of revised orders, including complying in material
20 respects with the sale and bid procedures order and the
21 timelines there, including the filing of the successful bid,
22 the transmission of -- and I think this will be also in the
23 transcript, Your Honor -- the transmission of those bids.

24 Your Honor, with respect to the witness testimony
25 that we intend to put in -- on for Your Honor today, we

1 intend to call the -- the debtors intend to call two
2 witnesses. Mr. Reid Snellenbarger, who has actually
3 testified before Your Honor with respect to the bid
4 procedures, also testified in Mr. Denton regarding the sale
5 process, and Mr. Holden the debtor's CRO.

6 My understanding was that the successful bidder,
7 Mr. Gihuly, is here in the courtroom from Latham & Watkins
8 and represents that successful bidder. I believe he will be
9 calling two witnesses with respect to adequate assurance and
10 financial wherewithal to close the transaction.

11 Your Honor, just briefly as an overview with
12 respect to the standard, and I remember Your Honor the very
13 first day I was here you asked me about the business
14 judgment rule and we'll go through some of that, so --

15 THE COURT: Well that was because Mr. Denton had a
16 side deal, for lack of a better phrase. Is that true in
17 this case also?

18 MR. GALARDI: Yes, Your Honor. It is true that
19 there is also another deal in that, but Your Honor --
20 listening to Your Honor, and as I remember telling you, we
21 had an independent committee member, that independent
22 committee member was designated as special committee when we
23 were here and he was the sole person responsible for the
24 approval. And as auctions have a way of working it out, I
25 don't think -- I know we've consulted with the committee and

1 they knew about the negotiations, we'll put on a little bit
2 of testimony with respect to that, the transcript will
3 reflect what went on with Mr. Denton.

4 But with respect to the approval Your Honor had
5 read me when I -- it still stings a little bit on the 363(b)
6 iridium when I didn't get the standard right for -- didn't
7 satisfy the standard on Lyondell, what you will hear today
8 is that we satisfy the Lyondell factors with respect to the
9 sale.

10 You will hear testimony that the value of the
11 assets as relative to the estate as a whole will be
12 substantially all.

13 You will hear about the time, and I've already
14 eluded to it, that we commenced these cases about 68, 69
15 days ago and the sale process has run about 48 days by my
16 count.

17 That this sale is going to be what's necessary for
18 a plan of reorganization, that this company could not
19 reorganize outside of bankruptcy or through a stand-alone
20 plan, there wasn't financing available, Your Honor is
21 familiar with the DIP proceedings.

22 That the proposed disposition of the assets upon
23 sell, that is the cash, is not setting up, is not a sub rosa
24 plan of any sort, it is being kept in a single account for
25 the parties to hopefully resolve consensually on an

1 allocation and that will determine creditor distributions.

2 That this is in fact a sale.

3 That Your Honor we conducted, and I think this is
4 a critical point, we conducted an auction. As Your Honor
5 may recall that the starting cash purchase price under the
6 stalking horse APA was \$90 million, as a result of the
7 auction the cash purchase price is now \$135 million, and
8 also under the stalking horse APA there were various what I
9 call potential liabilities, including there was an issue of
10 whether the collective bargaining agreement would be
11 assumed, there was an issue of whether the debtor's 5th
12 Avenue lease would be assumed, and then there were a series
13 of other contracts.

14 As you will hear in the testimony from Mr. Holden
15 today those liabilities are also now being assumed by the
16 buyer.

17 Your Honor may also remember the dialogue we had
18 about why were we cash collateralizing the 5th Avenue lease
19 LC. What is especially helpful about that, and that
20 constituted some of that 40 million of secured debt that I
21 mentioned early on, I believe that there is an agreement
22 with respect to the 5th Avenue landlord who filed an
23 objection as to the adequate assurance.

24 So in connection with the assumption we will get
25 back the LC, the cash collateral comes back, that's a

1 significant help to us as well.

2 And, Your Honor, then finally, and I think it's
3 the most important factor as Your Honor cited and as cited
4 in Lyondell, is that whether the assets are increasing or
5 decreasing in value. You will hear testimony that they are
6 decreasing in value. I won't say this is the case of the
7 melting iceberg, it's more of a slow melt, but yet there is
8 very serious concerns about the value of the company as its
9 undergone the litigation and other matters.

10 Your Honor, also with respect to the other
11 subdivisions of 363 you will hear that this sale should be a
12 sale free and clear under the five, you know, conjunctive
13 tests. One applicable law will permit the sale free and
14 clear.

15 THE COURT: You're selling it for more than the
16 aggregate liens, right?

17 MR. GALARDI: We're selling it for almost
18 \$95 million more than the aggregate liens.

19 THE COURT: So you satisfy (f)(3) don't you?

20 MR. GALARDI: We satisfy (f)(3), those -- and
21 again there's a reservation of rights, which I think has
22 been withdrawn, but Your Honor does have findings regarding
23 the publication issue because there are web contents so we
24 are still going to say it's free and clear. We think
25 applicable law allows you to sell under Philadelphia

1 newspapers, we did brief that issue, so that objection is
2 withdrawn, so we don't have a live objection for Your Honor
3 to be comfortable with the findings we're asking you to
4 make.

5 THE COURT: What is the finding you're asking me
6 to make?

7 MR. GALARDI: There's a finding about the
8 successor interest here and that it is not an adverse
9 interest, it is being sold free and clear.

10 THE COURT: You use that phrase adverse interest.
11 I couldn't find a definition of that.

12 MR. GALARDI: I think it's -- well it's in the
13 agreements, but it is the way in which the bidders have
14 referred to what I'll call the free and clear language of
15 claims, liens, and encumbrances.

16 THE COURT: Claims, liens, and encumbrances I
17 understand, adverse interest I don't.

18 MR. GALARDI: Okay. Then we will --

19 THE COURT: Well you'll have to put the definition
20 of whatever it is into the order.

21 MR. GALARDI: We will do so in any order that Your
22 Honor approves.

23 Your Honor, there is an interest that Your Honor
24 may recall from the first day that is still in dispute,
25 which is a secured interest, which is the make whole, that

1 second lien that everybody has reserved their rights on
2 that. So we believe that although we are not paying that
3 off out of sale proceeds there is sufficient cash -- I
4 believe it's about \$4 million if I'm not mistaken -- that
5 size claim, there is sufficient cash to cover it, but it is
6 a bona fide disputed lien so we think we satisfy (4), and we
7 also --

8 THE COURT: You satisfied (f)(3).

9 MR. GALARDI: Okay. Fine. Satisfied (f)(3).

10 With respect -- what I'll do, Your Honor, let's
11 move on and I just will call my first witness.

12 THE COURT: Go ahead.

13 MR. GALARDI: Thank you. I will call
14 Mr. Snellenbarger to the stand.

15 THE COURT: Would you raise your right hand,
16 please.

17 REID SNELLENBARGER, WITNESS, SWORN

18 THE COURT: Please state -- take a seat and state
19 your name.

20 THE WITNESS: Reid Snellenbarger.

21 DIRECT EXAMINATION

22 BY MR. GALARDI:

23 Q Mr. Snellenbarger, who are you -- by whom are you
24 employed?

25 A Houlihan Lokey.

1 Q And what is your position at Houlihan?

2 A I'm a managing director in the finance and
3 restructuring group.

4 Q Okay. And what is Houlihan's role in these cases?

5 A We are advising the company through a variety of
6 strategic alternatives, including raising financing and
7 selling the company.

8 Q And you previously testified before this Court
9 regarding the bid procedures -- in the contexts of the bid
10 procedures hearing, correct?

11 A I did.

12 Q Okay. So I'm going to try to stay now all post-bid
13 procedures, okay?

14 So what has been your role in the sale process
15 subsequent to the entry of the bid procedures order?

16 A We, with the assistance of the company and counsel and
17 other advisors, reached out to a variety of parties to see
18 if they'd be interested in buying the company. We finalized
19 a data room for those that signed NDAs -- solicited NDAs,
20 got those signed, opened up a data room for those that did
21 it, arranged management meetings for those that were
22 interested, and urged people to submit bids before the
23 qualified bid deadline.

24 Q Okay. So how many potential bidders were contacted by
25 Houlihan?

1 A Sixty-three.

2 Q Okay. And how many of those signed non-disclosure
3 agreements?

4 A Twenty-one.

5 Q And how many of those conducted due diligence?

6 A Twenty.

7 Q And how many ultimately submitted a qualified bid?

8 A One.

9 Q And that bidder was that entity?

10 A Univision.

11 Q Okay. Univision. And it's Unimoda is the entity --

12 A And Unimoda, the subsidiary that --

13 Q Okay. And what is the relationship between Unimoda and
14 Univision?

15 A Unimoda is a wholly -- 100 percent whole-owned
16 subsidiary of Univision.

17 Q And when you testified back in the context of the bid
18 procedures hearing I think you testified that there were
19 four or five bidders that had been contacted pre-bankruptcy,
20 correct?

21 A That's correct.

22 Q And was that one of the bidders that were contacted
23 pre-bankruptcy?

24 A Yes.

25 Q Okay. And it had been involved in other discussions

1 with the company prior to the bankruptcy, correct?

2 A That's correct.

3 Q Okay. It was your understanding that they weren't
4 prepared to be the stalking horse bidder, correct?

5 A That's correct.

6 Q Okay. Now, do you believe that -- in hindsight on the
7 process do you believe that the bidders or the potential
8 bidders had adequate time to determine whether or not to bid
9 on the assets?

10 A I do.

11 Q And as you sit here today do you know of any bidders
12 that said that they needed more time to formulate a bid for
13 the assets?

14 A No.

15 Q Okay. And do you think that the company would have
16 gotten a higher or better bid had they extended the time for
17 soliciting bids?

18 A I do not.

19 Q Okay. Why not?

20 A Based on the feedback we received for those parties
21 that had passed, it was more of a strategic fit or the level
22 of value rather than time, and given the work we had done
23 prepetition on the data room and so forth, we gave people,
24 my opinion, adequate time to do their due diligence.

25 Q Okay. Now, did Houlihan play a role in determining

1 whether bidders were qualified to bid?

2 A We did.

3 Q Okay. And did Houlihan assess the financial
4 wherewithal of the potential bidders?

5 A We did.

6 Q Okay. And did Houlihan assess the finance wherewithal
7 of Unimoda?

8 A We did.

9 Q Okay. And does Houlihan believe that Unimoda has the
10 -- at the time that it submitted its initial bid -- when did
11 it submit its initial bid?

12 A Last Friday.

13 Q Okay.

14 A Excuse me Monday.

15 Q Monday. Seems like a long time ago, correct?

16 A It does.

17 Q So it was Monday and the bid deadline was Monday,
18 correct?

19 A Correct.

20 Q And is it -- do you understand what the time was for
21 the bid deadline?

22 A It was 5 p.m. that Monday.

23 Q Okay. And did they submit their bid before 5 p.m.?

24 A They did.

25 Q And did they also submit a security deposit before

1 5 p.m.?

2 A They did.

3 Q And what was the amount of the bid that they submitted
4 at -- on Friday?

5 A Ninety-five million.

6 Q Okay. And did you assess Unimoda and Univision's
7 financial wherewithal to be able to close that transaction
8 at \$95 million?

9 A We did.

10 Q Okay. And what did you determine with respect to that
11 financial wherewithal?

12 A They provided financial statements, along with a
13 description of their financing and cash available.

14 Q Okay. And did you advise the board as to the financial
15 wherewithal of Unimoda to close that bid?

16 A I did.

17 Q And what did you advise the board in that respect?

18 A We told them that we believed they had the financial
19 wherewithal to close that bid.

20 Q Okay. Now, are you also familiar with the final bid
21 from -- I'm going to call it Univision or Unimoda.

22 A I am.

23 Q And what was the amount of the final purchase price
24 offered by Unimoda after the auction?

25 A A hundred and thirty-five million of cash, plus the

1 assumption of the 5th Avenue lease, plus the assumption of
2 the CBA, plus assumption of a few other contracts.

3 Q Okay. So based on your review of the financials do you
4 believe that Unimoda has the financial wherewithal to close
5 the transaction at that significantly increased purchase
6 price?

7 A I do.

8 Q Do you have a view as to whether they will be able to
9 perform under the contracts they've assumed?

10 A I do.

11 Q And what do you base the view on their ability to
12 perform those contracts?

13 A Based on the information we received relative to the
14 size of their company and their general business profile.

15 Q Okay. Let's talk about their general business profile.
16 What do you understand Univision's business profile to be?

17 THE COURT: Univision or Unimoda?

18 MR. GALARDI: Unimoda.

19 BY MR. GALARDI:

20 Q Well Unimoda is an acquisition vehicle, correct?

21 A Correct.

22 Q And is it your understanding that Univision stands
23 behind Unimoda financially?

24 A They do.

25 Q I'll have to finish, I know I'm going fast. And is it

1 your understanding that Univision stands financially behind
2 Unimoda?

3 A It is.

4 Q Okay. And is it your understanding that Univision has
5 a number of companies within its family of companies?

6 A Yes.

7 Q Okay. And so when assessing the ability of Unimoda to
8 perform obligations, and given the testimony did you -- what
9 did you consider in making that conclusion -- reaching that
10 conclusion?

11 A We looked -- again, we looked at Univision's overall
12 financial wherewithal and also Univision at several other
13 online media brands that are consistent with the debtor.

14 THE COURT: Has Univision guaranteed the purchase
15 price? The bid?

16 THE WITNESS: I believe so. Yeah, I believe so.
17 They're 100 percent owner of Unimoda.

18 THE COURT: No, that's a different question.

19 MR. GALARDI: It's a different question. You're
20 asking a legal question.

21 BY MR. GALARDI:

22 Q Do you know --

23 THE COURT: I'll ask you the question.

24 MR. GALARDI: They have not guaranteed the -- or
25 they have guaranteed the purchase price. I know they

1 guaranteed the lease, but I think they've also guaranteed
2 the --

3 THE COURT: Okay.

4 MR. GALARDI: Mr. Gihuly has told me that they had
5 guaranteed it.

6 BY MR. GALARDI:

7 Q Mr. Snellenbarger, have you had many interactions with
8 the Univision people with respect to the doing of the due
9 diligence here?

10 A We have.

11 Q Do you have any reason to believe that they've entered
12 into any agreement with a third party to suppress the price
13 that the debtors would have received at the auction?

14 A I don't.

15 Q Okay. Do you have any understanding -- strike that.

16 Do you have an understanding that they had put as
17 a condition precedent to the deal some agreement with
18 Mr. Denton?

19 A Yes.

20 Q Okay. And what is your understanding of the condition
21 -- what I'll call the condition precedent?

22 A They wanted to have a non-compete agreement, non-
23 solicitation agreement with (indiscernible).

24 Q Okay. And do you know anything about the terms of that
25 agreement?

1 A I do not.

2 Q Okay. And did the company negotiate anything with
3 respect to that as far as you know?

4 A I'm not aware of any.

5 Q Mr. Snellenbarger, did you participate in board
6 meetings throughout the sales and marketing process? And by
7 that process I mean from the bid procedures hearing to
8 today?

9 A I did.

10 Q Okay. And how regular did the board receive updates
11 from Houlihan?

12 A At least weekly.

13 Q Okay. And, Mr. Snellenbarger, do you know who Scott
14 Tillman is?

15 A I do.

16 Q And who is Mr. Tillman?

17 A He is an independent board member of the debtors.

18 Q Okay. And do you have an understanding of what role
19 Mr. Tillman played with respect to the sale process?

20 A I do.

21 Q Okay. And what was your understanding of that role?

22 A He was designated as the sole member of the special
23 committee to determine the -- both the qualified bids and
24 the ultimate highest and best bid for the company.

25 Q Okay. Did Houlihan provide input to the board and

1 Mr. Tillman regarding the offers submitted by Unimoda at the
2 board meeting on August 15th, 2016?

3 A We did.

4 Q And did Houlihan advise Mr. Tillman and the board that
5 it believed that the Unimoda bid was a qualified bid and
6 that it should be declared what's been defined as the
7 baseline bid under the bid procedures?

8 A We did.

9 Q And why did you give that advice?

10 A Based on the price that was submitted, all the other
11 submissions that ticked off the qualified bid requirements,
12 including financial wherewithal we believed they were a
13 qualified bid and the baseline bid.

14 Q And so you believed the \$95 million met the minimum bid
15 increment?

16 A We did.

17 Q And you believed that the agreement was one that was
18 subject -- that could be closed?

19 A Correct.

20 Q And you believe they had the financial wherewithal to
21 have -- close that deal?

22 A That's correct.

23 Q And I know you're not a lawyer, but it satisfied in
24 your mind all of the other requirements of the bid
25 procedures and qualified bids?

1 A I believe so, yes.

2 Q Okay. Now, Mr. Snellenbarger, did you and others from
3 Houlihan attend the auction?

4 A We did.

5 Q Did you participate in negotiations outside the room in
6 which the actual auction was taking place?

7 A We did.

8 Q Okay. And how would you characterize those
9 negotiations?

10 A Primarily clarifying various differences in the
11 contracts -- in the APA and the contracts, and then
12 ultimately during the round of bidding there were assumption
13 of certain contracts, including the 5th Avenue lease, and
14 then therefore there was negotiation discussion of how the
15 debtors valued that assumption.

16 Q Okay. Now, I'm going to take you before the auction.
17 You mentioned that there were negotiations regarding the
18 assumptions of lease, correct?

19 A Correct.

20 Q During the course of the proceedings have you heard of
21 anything called the bidding matrix?

22 A Yes.

23 Q And what's your understanding of the bidding matrix?

24 A The bidding matrix was a -- effectively a list of what
25 I call kind of non-cash assumptions and components of the

1 APA that the debtors reviewed and estimated a value for.

2 Q Okay. And did you have conversations with potential
3 bidders about the bid matrix?

4 A We did.

5 Q Okay. And what sort of conversations did you have?
6 And this is prior to the auction. Let's take prior to the
7 auction.

8 A All we said was that we were reviewing the various
9 assumption of contracts trying to determine what value we
10 would assign to it. If they were bid at the auction we
11 would let, you know, buyers know that at the time.

12 Q Okay. And did you participate in conversations with
13 the creditors' committee prior to the commencement of the
14 auction regarding the bid matrix of how the sale process
15 would operate?

16 A I did.

17 Q And do you recall when that meeting or call was?

18 A We had weekly calls with the committee and their
19 advisors up -- from the bidding procedures all the way up to
20 the auction.

21 Q Okay. And was there a call on a Saturday or Sunday
22 morning right before the auction receiving the bids?

23 A There was.

24 Q And were there calls on the evening that the bid was
25 received?

1 A There was.

2 Q Okay. And then did you participate in meetings at
3 which there was either a consultation with the committee or
4 the committee was present when negotiating the terms of the
5 agreements with the two bidders?

6 A Yes.

7 Q Now, Mr. Snellenbarger, do you believe the sale
8 transaction should be consummated as soon as possible?

9 A I do.

10 Q And why is that?

11 A Basically like any uncertainly to get to close creates,
12 you know, a concern over getting the deal closed. I think
13 primarily here I think employees, in our view, want to have
14 comfort that the transition is going to be seamless and
15 quick, and that will reduce any concern of employees
16 leaving.

17 Q Has there been a concern about employees leaving during
18 the sale process?

19 A There has.

20 Q Okay. And has there been concerns about the offers for
21 employment with respect to the successful bidder?

22 A Yes.

23 Q Okay. And was one of the terms that was negotiated
24 with the successful bidder, did it address one of those
25 concerns about employees?

1 A It did.

2 Q And could you explain what that provision was?

3 A I believe part of the kind of final purchase agreement
4 the acquirers agreed to make offers to 95 percent of the
5 employees.

6 Q Okay. And do you remember what the phrase was in the
7 stalking horse bid as to the number of offers that would
8 have to be made to employees?

9 A I believe substantially all.

10 Q Okay. And so now this bidder, as well as Ziff,
11 increased that or clarified that to 95 percent of the
12 employees, correct?

13 A That's correct.

14 Q I'm going to turn very quickly to the Ziff Davis break-
15 up fee and expense reimbursement.

16 A Okay.

17 Q Okay. Do you have an understanding of what the break-
18 up fee and expense reimbursement provisions were in the Ziff
19 Davis stalking horse agreement?

20 A I do.

21 Q And what is your understanding?

22 A They have a break-up fee I believe 2.475 million, plus
23 an expense reimbursement up to 1.25 million.

24 Q Okay. And do you have an understanding or a belief as
25 to whether that expense reimbursement portion, the 1.25,

1 will have been expended?

2 A I believe it will be.

3 Q Okay. And if it's not expended what effect will that
4 have on the estate?

5 A It'll be more net proceeds to the estate.

6 Q And could you just explain how you come to that
7 conclusion?

8 A Well since Univision or Unimoda was the acquiring
9 entity we owe Ziff the break-up fee and expense
10 reimbursement that'll come out of the sale proceeds. If
11 Ziff did not -- will not -- did not use all the 1.25 and
12 it's less we have to pay Ziff less therefore there'll be
13 more proceeds available to the estate.

14 Q Okay. And was that all explained on the transcript of
15 the auction?

16 A I believe it was.

17 Q And did all of the parties agree, all the parties being
18 two, did Univision agree that they were going to live with
19 the 3.75 as the break-up fee expense reimbursement for each
20 of the successive bids?

21 A Yes.

22 Q Now, Mr. Snellenbarger, do you believe that Ziff Davis
23 earned its break-up fee and expense reimbursement?

24 A Absolutely.

25 Q Do you believe that you would have had the same sort of

1 transaction had it not served as the stalking horse?

2 A No.

3 MR. GALARDI: That's all my questions for
4 Mr. Snellenbarger.

5 THE COURT: Is there anyone who wants to cross-
6 examine the witness? Hearing no response you can step down.
7 Thank you.

8 THE WITNESS: Thank you.

9 MR. GALARDI: I would call Mr. Holden to the stand
10 now.

11 THE COURT: Raise your right hand, please.

12 WILLIAM HOLDEN, WITNESS, SWORN

13 THE COURT: Please take a seat and state your
14 name.

15 THE WITNESS: Women yam Holden.

16 DIRECT EXAMINATION

17 BY MR. GALARDI:

18 Q Mr. Holden, by whom are you employed?

19 A Opportune.

20 Q Okay. And what is your position at Opportune?

21 A I'm a managing director in their restructuring group.

22 Q Okay. And what has your role been in this -- in the
23 case of the Gawker Media case?

24 A I was retained as the chief restructuring officer.

25 Q Okay. And what was your role in the -- in respect to

1 the sale process?

2 A I was primarily the boots on the ground at the company
3 preparing and pulling information that was being requested
4 by various bidders, pulling that together and packaging it
5 and communicating it either directly to prospective bidders
6 or communicating it through Houlihan who would reach out to
7 the bidders.

8 Q Okay. And how many parties do you believe that you
9 dealt directly with as opposed to through the counsel or
10 through Houlihan?

11 A Approximately six.

12 Q Okay. And do you have any -- do you believe that the
13 information -- did you ever get a request for information
14 that you don't believe that you satisfied?

15 A No.

16 Q And had you heard any bidders say that they weren't
17 getting the information they needed in order to make a bid?

18 A No.

19 Q Now, did Opportune help organize the data room?

20 A We helped organize as well as populate the data room.

21 Q Okay. Do you believe that the debtors provided
22 potential bidders with an adequate time in which to conduct
23 due diligence?

24 A Yes.

25 Q Okay. Do you think that if the debtors had more time

1 they would have received a higher bid than that -- than the
2 bid they received at the conclusion of the auction from
3 Unimoda?

4 A No, I do not.

5 Q Okay. Why not?

6 A The media attention that came to this company involves
7 the -- when it filed for bankruptcy and the announcement of
8 the stalking horse bid was very widespread, and if there was
9 anyone who had any interest that was in this space they knew
10 how to reach out and, you know, talk to Houlihan, talk to
11 the company.

12 In addition to that, in conversations with
13 Houlihan, it sounded as though -- or it was represented that
14 we didn't leave a single stone unturned in terms of the
15 potential interested parties that would be -- that want to
16 buy the assets.

17 Q Okay. Now, Mr. Holden, do you have any reason to
18 believe that Unimoda or Univision entered into any agreement
19 with any party to suppress the price of which the debtors
20 would receive in auction?

21 A No.

22 Q Would receive at the auction?

23 A I apologize. No.

24 Q Okay. And were you at the auction?

25 A Yes, I was.

1 Q And was there anything said on the transcript of the
2 auction that led you to that conclusion?

3 A Yes.

4 Q And what is your recollection?

5 A I believe you had asked both parties whether or not
6 there was any type of collusionary behavior that they had
7 participated in in terms of being able to suppress the
8 price.

9 Q And outside of that particular representation by both
10 of the bidders did you come to find or have any belief that
11 there was any collusion or relationships with any of the
12 other bidders?

13 A No.

14 Q Now, are you aware of any relationship between any
15 insiders of Gawker and Unimoda or Univision?

16 A No, I'm not aware.

17 Q Okay. And are you aware of any of the conditions
18 precedent to the closing of the -- sorry.

19 Are you aware that one of the conditions precedent
20 to the closing of the transactions that Mr. Denton and
21 Unimoda enter into some sort of non-competition agreement?

22 A I'm aware of that.

23 Q Okay. Are you -- were you aware of any conversations
24 between Mr. Denton and Unimoda prior to their submitting the
25 bid on August 15th?

1 A I was not aware of any conversations.

2 Q And did Mr. -- did there come a time when Mr. Denton
3 made a representation at a board meeting at which you were a
4 party about that?

5 A I do not recall.

6 Q Okay. That's fine.

7 Do you recall anything at the auction with respect
8 to Unimoda making any representations with respect to
9 conversations between Mr. Denton and --

10 A I do not -- I'm not aware or do not recall anything
11 being mentioned.

12 Q Okay. Mr. Holden, you heard Mr. Snellenbarger testify
13 about the bidding matrix. Were you the controller if not
14 the author of the bidding matrix?

15 A Along with my team members we were the ones who were
16 putting the numbers together and reading through the
17 documents.

18 Q Okay. And would you describe roughly, other than
19 contracts, were there other things on that bidding matrix?

20 A The big ones were contracts and leases.

21 Q Okay.

22 A There were some other sort of softer items, but they
23 were -- they actually never played a really predominant role
24 in the auction process.

25 Q Okay. And the contracts included the collective

1 bargaining agreement?

2 A Contracts included collective bargaining agreement,
3 there was a lease for the headquarters on 5th Ave., there
4 was a large agreement with a counterparty called Tabula
5 (ph), and then there was a number of smaller types of
6 contracts.

7 Q Okay. And there was numbers that were given -- there
8 was numbers associated with that?

9 A Yes. We put together estimates for what we thought the
10 rejection damages could be in the event that some of these
11 contracts were not taken by the buyer.

12 Q And was there a discussion that you recall with respect
13 to the value to be placed on rejection damage claims?

14 A There was a -- there's a number of conversations that
15 we had with them -- with the unsecured creditors' committee.
16 We discussed that we would be valuing these at 100 cents on
17 the dollar. And there was other conversations about the
18 calculations to determine specifically the amount of
19 rejection damages that we could be suggest to with the
20 headquarters -- with the lease at the 5th Ave.

21 Q Okay. And could you describe how the bidding matrix
22 was used both before the auction and -- I mean both before
23 the auction and during the auction?

24 A Before the auction it was -- before the auction we
25 consulted with the unsecured creditors' committee in terms

1 of the numbers that we had and how we had compiled it and
2 why we thought that these were the important factors. I
3 believe that we had agreement on that. We did not have any
4 disagreements by --

5 THE COURT: Hold on for a minute. Is that phone
6 recording? You can't record. Turn it off. Go ahead.

7 MR. GALARDI: Thank you, Your Honor.

8 THE COURT: There's no recording or photo taking
9 in the courtroom. Go ahead.

10 THE WITNESS: Where did I get lost?

11 THE COURT: Maybe we should listen to the record.

12 (Laughter)

13 THE COURT: Go ahead.

14 BY MR. GALARDI:

15 Q I think you were talking about the contracts and the
16 conversations that you had had with the committee and going
17 through how you calculated.

18 A Yeah. The question at dispute -- the big question at
19 dispute that we had was the rejection damages for the lease
20 that we have on 5th Ave. At issue was whether or not we
21 could -- we should be valuing it through the full 2029 or
22 there's an early option to come out in 2024, and if you
23 leave in 2024 what are the -- what's the penalty, what are
24 the straight line amortization costs that were borne by the
25 landlord and how do those get fit into the equation. So it

1 was basically to determine that 6.4 million was a reasonable
2 number to use in the context of the auction.

3 Q Okay. And you said there was a dispute. Was that
4 dispute with the committee or was it a dispute with one of
5 the parties?

6 A It was a dispute with one of the parties.

7 Q And that was with Ziff Davis, correct?

8 A That was with Ziff Davis.

9 Q And that was -- and there was a question because at
10 some point in the auction did one of the parties decide to
11 assume that lease?

12 A Yes.

13 Q And that party was?

14 A Univision decided to assume the lease.

15 Q Okay. And so then there was a conversation regarding
16 the value to be put on that which was the \$6.4 million?

17 A That's correct.

18 Q And there was a concern as to whether that was too
19 great a value to put on it in light of the potential
20 rejection damage claim?

21 A That's correct.

22 Q And that conversation ultimately got resolved, correct?

23 A It did get resolved. We got resolved and agreed on the
24 6.4 million that we had original come with.

25 The other issue that developed on that, which we

1 also resolved, was the timing of payments and how we could
2 set up a mechanism whereby Ziff would put the 6.4 million
3 into an escrow account and we would run out the extension of
4 our 210 days on the lease. At the end of that if they
5 ultimately did reject the lease then the debtor would take
6 the 6.4, but if they assumed it at that time they would take
7 the 6.4. This was basically a mechanism to give them more
8 time to figure out their own real estate issues and how they
9 wanted -- whether or not this was a piece of property that
10 they wanted or not.

11 Q And in your view the determination to give them that
12 that option was equivalent to the option of assuming the
13 lease, so they each got \$6.4 million of value?

14 A That's correct.

15 Q Okay. And then -- and there was no dispute about that
16 once that matter was resolved during the auction, correct?

17 A No, there was not.

18 Q And did the committee participate throughout that
19 process as well and consult with respect to that issue?

20 A As I recall the committee was in the room with us with
21 Ziff, they were outside of the room with us as we came up
22 with numbers. If they were in 100 percent of every meeting
23 that came in and out I'm not sure, but it was very, very
24 inclusive.

25 Q Okay. Now, Mr. Holden, did you participate in board

1 meetings throughout what I've called the sale and marketing
2 process which is leading up to the auction but after the bid
3 procedures hearing?

4 A Yes, I did.

5 Q Okay. And how regularly did the board meet and get
6 updates from Opportune?

7 A A minimum of once a week.

8 Q Okay. And, Mr. Holden, who is Scott Tillman?

9 A Scott Tillman is the company's independent board
10 director.

11 Q Okay. And do you have an understanding of the role
12 that Mr. Tillman played with respect to the sale process and
13 ultimately the approval of the successful bid?

14 A Scott Tillman was appointed as the sole member of a
15 special committee. This special committee has a number of
16 roles basically to make decisions where he is not
17 financially motivated one direction or another.

18 One of those decisions was to determine whether or
19 not we had a baseline bid that was above -- you know, higher
20 and better than the stalking horse bid, and he was involved
21 in those conversations and those decisions.

22 And subsequently he was eventually the ultimate
23 decision that was made on the Univision bid as being highest
24 and best.

25 Q Okay. So did you advise the board and Mr. Tillman on

1 that August 15th board meeting that you believed that the
2 Unimoda bid was a qualified bid and it should be declared as
3 the baseline bid for the purposes of commencing the auction?

4 A Yes.

5 Q And did Mr. -- Mr. Tillman ultimately determined that
6 it was a baseline bid at least in part of your advice?

7 A Yes.

8 Q Okay. And do you understand that Mr. Tillman also
9 ultimately approved the revised bid from Unimoda at the
10 conclusion of the auction?

11 A Yes.

12 Q Okay. Now, Mr. Holden, you did say you were at the
13 auction, correct?

14 A Correct.

15 Q And you did participate in various negotiations which
16 you've talked about with respect to the Fifth Amendment --
17 the 5th Avenue lease as opposed to the Fifth Amendment?

18 A That's correct.

19 Q Okay. And how would you characterize those
20 negotiations between the parties?

21 A They were very much work sessions. They were amicable,
22 they were -- we were working to try and find solutions in
23 order to -- most of the negotiations revolved around trying
24 to neutralize the two contracts from a -- putting them on
25 parity with one another so that you could then commence to

1 the -- to more of the financial part of the auction.

2 Q And were the debtors successful along with consultation
3 with the committee eventually to get those contracts to what
4 you've called parity?

5 A Yes.

6 Q And then how did the auction proceed thereafter?

7 A From that point forward, and there was a couple of
8 rounds in there where I believe that we opened up the
9 bidding and then Univision said we'll take the lease and so
10 we had to break and go through and get them back on parity.
11 And then we came back to the room, we started going up I
12 think in \$1 million bid increments. There was nothing that
13 was meaningful until again Univision said that they will
14 take some additional contracts. At that point it was
15 matched with Ziff Davis, which again put the contracts on
16 parity.

17 So then we commenced going through bid increments
18 of \$1 million, I think there was a certain point in which the
19 bidding increments increased by the sole -- I think it was
20 not -- it was done on behalf of Univision and Univision
21 alone decided to start increasing their bid increments, and
22 eventually they -- Ziff Davis had indicated that they were
23 not going to bid anymore.

24 Q Okay. Mr. Holden, absent a sale do you believe it
25 would be possible for the company to do a stand-alone

1 restructuring to emerge from bankruptcy?

2 A It would not.

3 Q Why not?

4 A There are three or four elements that are out there
5 that will -- would make it virtually impossible. One is
6 that you have a flight of talent, you have a lot of
7 employees that are leaving the company that are getting
8 poached by other companies. This is a very scary and
9 daunting place for them to be working for a bankrupt
10 company. And these are very talented people who are very
11 sought after. So you would lose employees.

12 We are having problems advertisers. Advertisers
13 have -- there are some advertisers who have full out
14 stopped. There are other advertisers who have said, gosh,
15 we really wish that you guys could get through with the sale
16 so that we could kick back into gear here. I would fear
17 that if this sale did not complete that we would have -- we
18 would lose many more advertisers --

19 Q And Mr. --

20 A -- and the loyalty that is actually keeping them with
21 us to this point.

22 Q I think I may have cut you off. You've given two, did
23 you really have three in mind?

24 A I have three in mind.

25 Q Go ahead, what's the third?

1 A The third one is the litigation overhang and the
2 potential exposure to future litigation. This is a
3 lightning rod for a lot of criticism and litigation, and the
4 longer that we keep this out there and exposed the more
5 opportunity there is for more harm or claims to be put up
6 against the estate.

7 Q Okay. And you participated in the solicitation of DIP
8 financing, correct?

9 A In the solicitation, yes.

10 Q Okay. And do you think it would also be difficult to
11 find financing for a stand-alone plan given the other three
12 issues that you've just identified?

13 A It would certainly be difficult.

14 Q Okay. Do you believe that the transaction should be
15 consummated as soon as possible?

16 A I do, for all the reasons that I've previously stated
17 for why it should not -- it wouldn't be able to reorganize.

18 Q Mr. Holden, what is going to happen with the sale
19 proceeds?

20 A The sale proceeds are going to be deposited into an
21 account.

22 Q Okay. So what is your understanding of the approximate
23 amount of secured debt as you sit here today?

24 A I -- somewhere between 37- and \$40 million. I use
25 \$40 million as a good estimate.

1 Q Okay. And so the first proceeds will, according to the
2 court order, is to be used to pay whatever the court orders
3 allow to be paid as to that secured debt, correct?

4 A That is correct.

5 Q And then the rest of the proceeds are being put into an
6 account in the United States, correct?

7 A That's correct.

8 Q And did you get authority to open up account?

9 A I do have authority. Well I have authority to open up
10 the account for the bid -- the earnest money deposits.

11 Q Right.

12 A Subsequently could that be used for the proceeds, yes.

13 Q Okay.

14 A We'll have a choice.

15 Q And by opening up the account in the United States what
16 name did you open that account in?

17 A Gawker Media, LLC.

18 Q Okay. And by opening the account in Gawker Media, LLC
19 are you saying in any way or suggesting that all of the
20 proceeds from the sale should be allocated to the assets of
21 Gawker Media, LLC?

22 A Absolutely not. We are -- I believe that we've
23 actually included language to say that us putting it in
24 there is by no means an indication of any type of
25 allocation. It is a matter of convenience and ease. We

1 want to try and minimize the amount of administrative burden
2 that we have for the coming six months.

3 Q And as the committee and the debtor has been clear,
4 that this is not resolving any allocation issue with respect
5 to those proceeds?

6 A I have not had those conversations, but I've been made
7 aware or advised that is the general understanding.

8 Q Okay. Now, after the close of the transaction will
9 there be some lease still -- some properties still behind?

10 A We will have a handful of assets, which will include
11 obviously the cash, we will have a lease, which we will hope
12 to be able to assume and assign to the existing subtenants,
13 we'll have some shares in a very small media company, which
14 we will attempt to liquidate.

15 Q Okay.

16 A Otherwise it's nothing of any type of substance.

17 Q Okay. And so do you believe as you sit here today that
18 a consummation of the sale is in the best interest of the
19 debtors, their estates, and other stakeholders?

20 A Yes.

21 Q Okay. And do you have any reason to believe as you sit
22 here today that that sale can't be consummated on the time
23 frame set forth in the Unimoda, Univision asset purchase
24 agreement?

25 A No.

1 Q And is it your understanding that that deal is slotted
2 to close somewhere in the early September 9th or shortly
3 thereafter?

4 A September 9th or shortly thereafter is my
5 understanding.

6 Q Now, I'm going to turn to just a few questions on the
7 Ziff Davis break-up fee. Did you have an understanding of
8 the Ziff Davis break-up fee and expense reimbursement?

9 A Yes.

10 Q And what is your understanding of the maximum amount of
11 the Ziff Davis expense reimbursement?

12 A 1.25 million on the expense reimbursement.

13 Q And how did that play into the auction? What
14 assumptions were made for the auction?

15 A Well there -- it was not just the expense
16 reimbursement, it was also the break-up fee. I believe that
17 we used 3.6 or 3.7 in the auction, and the idea was that
18 both bidders would be bidding at, you know, same numbers and
19 there would eventually be a credit that would go to Ziff
20 Davis for the 3.6, 3.7 million upon the conclusion of if
21 they were the ultimate -- if they were not the ultimate
22 winner.

23 Q Okay. And do you recall the last bid of Ziff Davis?

24 A The last bid of Ziff Davis I believe was 131.

25 Q \$131 million?

1 A I apologize. \$131 million.

2 Q And what was the highest and best bid received from
3 Unimoda?

4 A \$135 million.

5 Q So if you subtracted that expense reimbursement and
6 break-up fee that bid would still be better even after
7 subtracting that than the last bid by Ziff Davis; isn't that
8 correct?

9 A That's correct.

10 THE COURT: Were both bidders assuming the same
11 contracts so that the bidding matrix worked out the same
12 also?

13 THE WITNESS: That is my understanding, yes.

14 BY MR. GALARDI:

15 Q Let's follow up on that. They -- and let me clarify.
16 Did Ziff Davis assume the 5th Avenue lease?

17 A No, they did not.

18 Q But it did assume -- but --

19 A They had a mechanism to offset them not acquiring --

20 Q So the same 6.4 million of value was attributed to both
21 bids?

22 A That's correct.

23 Q Okay. But with respect to the CBA did it ultimately
24 determine that both bidders would assume the CBA?

25 A Yes.

1 Q And with respect to the Tabula contract were both
2 bidders assuming the Tabula contract?

3 A That's correct.

4 Q And I'm going to lose the name of the one other, I
5 think it's --

6 A Times International?

7 Q Yes. Was that bid -- did both bids assume that
8 contract?

9 A They both assumed both the Indian international
10 licensing agreement as well as an agreement out of the UK.

11 Q Okay. So there are some slight differences between the
12 two on the contract list, right?

13 A That's correct.

14 Q But in your estimation were those material economic
15 differences?

16 A No, they were not.

17 Q Okay. And otherwise the bids were and the documents
18 were essentially as you've said parity?

19 A That's correct.

20 Q Okay.

21 MR. GALARDI: No further questions for this
22 witness, Your Honor.

23 (Pause)

24 MR. GALARDI: I've been reminded to clarify
25 something that I'm hearing Mr. Torkin through Mr. Russell in

1 my head.

2 BY MR. GALARDI:

3 Q The 131 that was bid by --

4 A Ziff.

5 Q -- Ziff Davis, they were agreeing to bid the number but
6 it was always getting credit so that bid actually 131 was
7 minus their break-up fees so always giving them credit. Do
8 you recall that conversation?

9 A That's correct.

10 Q So when they said 131 they were always playing 3. -- I
11 led you to there so don't feel guilty -- they were always
12 playing at \$3.75 million less; is that correct?

13 A That's correct.

14 Q So it's not just a \$250,000 difference, it's actually
15 almost a \$4 million difference?

16 THE COURT: No, it's the other bid that's actually
17 less.

18 MR. GALARDI: Correct. It was actually -- that's
19 right. We just used that number so that we can go up. So
20 it was --

21 THE COURT: It was 131, we don't subtract anything
22 from that bid.

23 MR. GALARDI: Correct. So is there anything -- I
24 have no further questions.

25 THE COURT: Okay. Does anybody else want to

1 question the witness?

2 MR. GALARDI: I'm going turn the podium to
3 Mr. Gilhuly.

4 THE COURT: Yes.

5 MR. GILHULY: Your Honor, Peter Gilhuly of Laham &
6 Watkins on behalf of Univision and Unimoda.

7 Your Honor, I have two very brief witnesses.

8 THE COURT: Oh, are you done with this witness?

9 MR. GILHULY: I am, yes.

10 THE COURT: Is there anyone who wants to question
11 this witness? If not you can step down. Thank you.

12 MR. GILHULY: I have two witnesses who would have
13 brief testimony. I'm happy to proceed by way of proffer or
14 put them on live.

15 THE COURT: I'll accept a proffer.

16 MR. GILHULY: Okay. Thank you, Your Honor.

17 Your Honor, in --

18 THE COURT: Well I'll hear the proffer.

19 MR. GILHULY: Your Honor, in the courtroom today
20 is Philippe Huguin who is the president and chief operating
21 officer of Fusion Media Group, which is an unincorporated
22 division of Unimoda -- of Univision which houses its digital
23 assets.

24 If called upon to testify Mr. Huguin would testify
25 that he is one of the executives at Univision who was

1 intimately involved in Univision's efforts to purchase the
2 assets of the debtor, in fact we could fairly call him -- he
3 would testify that he was the chief negotiator on the
4 Univision team to do that. He was involved prior to the
5 petition date in that capacity, he was involved leading up
6 to the overbid, and he would also testify that he attended
7 the auction and was integral to all the negotiations between
8 Univision and the debtor with respect to this matter.

9 Mr. Huguin would further testify that after
10 substantial arms length negotiations Univision submitted its
11 overbid on August 15th prior to the bid deadline.

12 He would further testify that he attended the
13 auction and negotiated -- or was part of all --
14 substantially all of the negotiations that went on during
15 the auction and thereafter.

16 He would further testify that he believes that all
17 the negotiations conducted by Univision were conducted in
18 good faith, at arms length, and by parties that were
19 represented by counsel at all times.

20 Finally, Mr. Huguin would testify that he's not
21 aware of any indication of fraud, any collusion between
22 Univision, the debtors, Ziff Davis, or any other bidder or
23 any similar conduct that would taint the result of this sale
24 process, Your Honor.

25 That concludes the proffer for Mr. Huguin.

1 THE COURT: Is there anybody who objects to the
2 proffer and wants to cross-examine the witness? The record
3 should reflect there's no response. I'll accept the
4 proffer.

5 MR. GILHULY: Your Honor, the second proffer is
6 with respect to Mr. Matthew Drucker who is the senior vice
7 president, finance, and corporate controller of Univision
8 Communications, Inc., Your Honor.

9 If called to testify Mr. Drucker would testify
10 that Univision Communications, Inc. has guaranteed the
11 obligations of Unimoda LLC, the buyer entity in connection
12 with Unimoda's obligations under the asset purchase
13 agreement, including, Your Honor, share amounts and adequate
14 assurance of future performance.

15 Mr. Drucker would testify that Univision
16 Communications, Inc. has over \$500 million in available
17 liquidity under its current credit facilities.

18 And Mr. Drucker would also testify that he's
19 generally familiar with the financial obligations of the
20 purchase price, the cure amounts, and the future amounts due
21 under the contracts, and he believes that Univision
22 Communications, Inc. has more than ample resources to meet
23 all of those obligations.

24 That concludes the proffer with respect to
25 Mr. Drucker.

1 THE COURT: Is there anyone who objecting to the
2 proffer and wants to cross-examine the witness? The record
3 should reflect there's no response. I'll accept the
4 proffer. Thank you.

5 MR. GILHULY: Thank you, Your Honor.

6 MR. GALARDI: Your Honor, that does conclude the
7 testimony that I wanted to put in and for Your Honor with
8 respect to that. I do have a couple remarks as to the
9 agreements, the order, if Your Honor has questions.

10 The first point I did want to address is there is
11 a definition of adverse interest which is some times used as
12 claims. It's in the asset purchase agreement.

13 THE COURT: It should be in the order though.

14 MR. GALARDI: That's fine.

15 THE COURT: You know if litigation arises you
16 don't have to go to the asset purchase agreement.

17 MR. GALARDI: Absolutely agree, Your Honor. So
18 we'll make that modification.

19 Your Honor, I just want to run through a few of
20 the other changes, because I think it's important for Your
21 Honor to know some of the -- what I'll call the more other
22 significant changes with respect to the asset purchase
23 agreement that were agreed to, and then I'll turn to certain
24 of the objections.

25 First of all, Your Honor, I think everybody here

1 heard loud and clear that the liquidated damages clause that
2 was in the original stalking horse agreement should not find
3 its way into the APA. So we have stricken the liquidated
4 damages clause, Your Honor will not have to approve an asset
5 purchase agreement that has a liquidated damage clause. Not
6 that it would have had an effect, but we thought that was
7 important.

8 One of the significant changes that occurred with
9 respect to the contract -- with respect to contracts is both
10 bidders agreed and Unimoda agreed that when they make the
11 contract designation, and you'll see their terms in the
12 order closing contract designation, the contracts that they
13 have defined to accept cannot come off the list prior to
14 closing. There used to be a mechanism that could do it,
15 Your Honor is approving today the documents that they are
16 seeking to assume and assign, that is the fixed list.

17 Then there is a mechanism when I run through the
18 proposed changes to the order, should Your Honor approve the
19 sale, I can explain how those mechanisms agree, but that was
20 very important because we didn't want parties to be told
21 that their contracts were being assumed and assigned, but
22 oh, by the way, three days before the closing they fell off
23 the list.

24 Your Honor, with respect to the closing the --
25 it's the later of the conditions precedent or -- to be

1 satisfied or September 9th as I mentioned, and Mr. Holden
2 testified we believe it'll be the 9th or shortly thereafter.

3 Your Honor, there is -- there was a provision in
4 the asset purchase agreement that said promptly liquidate
5 Kinja. Now there is a mechanism that says Kinja shall
6 remain in the bankruptcy and be promptly liquidated after
7 the bankruptcy. So the bankruptcy will itself determine it.

8 A little bit background on that provision. As
9 Your Honor has heard testimony there's an allocation issue,
10 and had you liquidated Kinja then you would have had to give
11 it proceeds to liquidate. We do believe it's going to have
12 some of the proceeds so it will remain in bankruptcy as a
13 debtor, it has access to cash. I think it's \$2 million.
14 Line of credit that it'll be able to draw upon. We don't
15 think there are any obligations. We believe it's solvent on
16 the date of the closing. We are not incurring
17 administrative expense.

18 You'll see a provision in the order, I think it's
19 paragraph 39 that was negotiated with the committee to
20 address these sorts of issues, but I did want to point that
21 was a important provision to us.

22 As was noted the change from substantially all to
23 95 percent of such employees. I don't think there are as
24 many employees as Mr. Holden may have suggested. We think
25 there's been a few and they -- but it's not been that.

1 There is a concern, I would say that.

2 And with respect to the reps and warrants -- the
3 reps. There have been some changes with respect to the
4 reps.

5 But those were the changes, and frankly both
6 parties I will say were very cooperative, we had a very
7 smooth auction conducted, and as Mr. Holden testified we got
8 to parity, though not identical contracts, parity with
9 respect to the economics and essentially the terms from a
10 corporate standpoint.

11 Your Honor, what I'd like to do is take up the
12 objections in the order. I'm going to do them in the order
13 that appeared in our chart attached to the sale objection.

14 Your Honor, the first one is the -- and most of
15 them, Your Honor, I will say were not really objections,
16 they're reservations of rights or cure amounts, so I -- so
17 but the first one I'm just -- my understanding it has been
18 withdrawn. I think counsel will confirm that it's been
19 withdrawn. But it did raise an issue, and as I mentioned
20 earlier and we took the time to brief --

21 THE COURT: Which one is that?

22 MR. GALARDI: This is the Dr. Sheba (ph)
23 Ayyadurai, I apologize, and Ashley Terrill.

24 THE COURT: That was a reservation of rights.

25 MR. GALARDI: That was a reservation of rights. I

1 understand the reservation has been withdrawn. We did do a
2 small -- a short response to the First Amendment and that
3 goes to the successor issue. So I think that's been
4 withdrawn. Counsel can correct me if I'm wrong.

5 MR. VASSALLO: Yeah, hello, Your Honor. Anthony
6 Vassallo representing Sheba Ayyadurai and Ashley Terrill.

7 Yes, there seems -- as far as we're concerned
8 reservation of rights is withdrawn, but we have a couple
9 issues about what the debtor said in their reply.
10 Specifically --

11 THE COURT: Let me just say that I'm not going to
12 get into an argument today about whether there's a
13 continuing tort or anything like that.

14 MR. VASSALLO: Judge --

15 THE COURT: That's not for this Court.

16 MR. VASSALLO: -- I totally agree, and as a matter
17 of fact it seemed that the debtors were concerned that we
18 would come in and start raising those issues. We would
19 never sandbag the Court.

20 THE COURT: I'm going to stop you.

21 MR. VASSALLO: I -- Judge, my only concern was
22 that there were a couple statements in the reply such as
23 that somehow the reservation of rights could appear to be a
24 veiled threat against various parties. I spoke to counsel
25 for both bidders, they've never perceived -- excuse me, I'm

1 fighting a summer cold -- the reservation as any kind of
2 threat.

3 And also there's an issue about that somehow this
4 reservation impacted the sale. You know, the debtors put on
5 testimony from two parties, neither of them said that the
6 sale was impacted by the fact that this document --

7 THE COURT: Let me ask you a question. The -- at
8 least the proposed order, the revised order that I got said
9 -- has a statement that says, "All reservations of rights
10 are hereby overruled on the merits with prejudice." Do you
11 have an objection to that?

12 MR. VASSALLO: Yes, Your Honor, because that'll be
13 an issue that's going to be discussed down the road and you
14 can't -- you know, as it is with the potential bidder, you
15 know, we're free to negotiate whatever we want with them.

16 THE COURT: Right. Okay.

17 MR. VASSALLO: That's pretty much it, Your Honor.

18 We supported the sale and I felt that we had to
19 put something in, because we're individual creditors, the
20 creditors' committee represents other things they can't
21 advocate for us individually, and I just -- just in case
22 something had happened I just wanted the ability to speak.
23 That's it.

24 THE COURT: Thank you.

25 MR. GALARDI: I'm sure we'll take up that part of

1 the order at some point soon, Your Honor, but I'll go
2 through the rest of the objections.

3 The Writers Guild of America had said -- wanted
4 all bidders to consider and we had -- I think I mentioned
5 this on August 9th to Your Honor, we were an advocate of
6 assuming and assigning the collective bargaining agreement.
7 That matter is resolved because the successful bidder has
8 agreed to assume and assign -- take an assignment of the
9 collective bargaining agreement.

10 The other objection or reservation of rights
11 limited objection was the one from the landlord at 114 5th
12 Avenue. As Your Honor has heard there has been lots of back
13 and forth. I do want to thank the -- frankly the counsel
14 for 5th Avenue who was available by phone, he and his
15 partner were available abling us to resolve certain of the
16 issues and bring pending.

17 My understanding is that limited objection has in
18 fact been resolved because the successful bidder and the
19 landlord have agreed as to the adequate protection --
20 adequate assurance and protection package. They're going to
21 document the agreement, but I understand that that is the
22 case.

23 THE COURT: Mr. Hoffmann?

24 MR. HOFFMANN: Good afternoon, Your Honor. Trevor
25 Hoffmann from Haynes and Boone.

1 Yes, I can confirm that that is the case. As of
2 now we've seen the adequate assurance package as far as the
3 financial information of the guarantor. That was
4 satisfactory. We are still trading drafts with counsel for
5 the purchaser as far as the replacement LC and the
6 guarantee. We don't anticipate any problems, they've
7 assured us that they're going to give us versions that are
8 substantially similar to the ones that we have now and that
9 that will happen between now and the closing. And so
10 subject to that happening we have no objections.

11 Obviously we do reserve rights to come back to the
12 Court if something unforeseen happens that -- but we don't
13 anticipate that happening.

14 And since Your Honor did mention it, we obviously
15 would object to the clause that says that reservations of
16 rights are overruled as prejudice.

17 Thank you.

18 MR. GALARDI: Your Honor, the next objection was
19 the objection of UniAmerica Life Insurance Company of New
20 York. That contract found its way to what I'd refer to as
21 the maybe list, so it's not a today issue because it's not
22 being assumed and assigned. So we've asked, subject to your
23 Court -- we've agreed, subject to Your Honor's approval, to
24 move that over to September 13th. I actually believe
25 that'll probably be moved again until such time as either it

1 is actually assumed and assigned and there's a notice
2 provision or there's -- or it's resolved.

3 Your Honor, the next one is partially -- again it
4 is a reservation of rights with respect to that, and again
5 Your Honor I'll go over the language in the order that says
6 reservation of rights are overruled, and I don't know of
7 there having any objections. What that objection was was if
8 we do not close before I think it's October 2nd or so they
9 wanted to come back, otherwise I believe we've resolved the
10 cure amount.

11 THE COURT: So it's resolved?

12 MR. GALARDI: I believe it's resolved, yes.

13 Similarly the next objection is the objection --
14 again, a limited objection of Google, Inc. There was an
15 objection that we had a cure amount of zero and that in fact
16 there were too many contracts. Again, doing this list I
17 think we've agreed that there are fewer contracts and that
18 we have agreed that the current cure for the Google
19 contracts is 110,951.48, and I believe that is how we have
20 resolved that objection.

21 THE COURT: Are these cure payments going to be
22 made by the buyer?

23 MR. GALARDI: Your Honor, they are made by the
24 buyer subject to a cap, but we are well under the cap for
25 the cure amount, and then after a cap there's a deduction to

1 the purchase price, but I think we're almost a million
2 dollars under the cap.

3 THE COURT: Okay.

4 MR. GALARDI: The Super Dry objection, Your Honor,
5 they are a subleasee on this Elizabeth Street property that
6 is not at all affected by the sale, so that has essentially
7 been mooted by the fact that it's neither -- it's been an
8 excluded contract so we won't have it back on an assumption
9 and assignment. As Mr. Holden had mentioned it's one of the
10 remaining assets. We hope to bring a motion to assume and
11 assign that to the underlying -- to the landlord.

12 Your Honor, Fastly had an informal objection only
13 as to the cure amount. We have resolved that. Again, they
14 were listed at zero, we've agreed that it is 53,869.22, so
15 we believe that informal objection is resolved. This is
16 reflected on the notices, and again, it's a buyer
17 obligation.

18 The AOL advertising, another informal objection
19 simply as to the cure amount. The -- again it was listed at
20 zero, they believe that it was \$24,615.19, and we believe
21 that resolves that objection.

22 With that, Your Honor, there are no objections to
23 the sale.

24 THE COURT: What are the -- you said that the
25 UniAmerica limited objection or I guess that particular

1 contract was being kicked over to September 13th. What's
2 the issue with respect to that?

3 MR. GALARDI: Well there's really no issue, Your
4 Honor. The way in which the contract designation worked was
5 the buyer had to determine I'm going to accept these or take
6 an assignment, I'm not going to want any of these, that
7 falls in the Super Dry, and then there was a series of
8 contracts that they had not made a determination about at
9 this point.

10 We've gone through the whole process of giving
11 them notice for adequate assurance and cure amounts, but
12 since the buyer had not yet made the determination if
13 between now and closing there's a determination it'll be
14 easier to deal with the UniAmerica decision on the 13th. If
15 the --

16 THE COURT: Well will there be a separate motion
17 either to reject or assume they assign that agreement?

18 MR. GALARDI: That's exactly to the -- there will
19 not be a separate motion, Your Honor, and that's part of the
20 sale order and the procedures as well as the APA and part of
21 our original relief, again, attempting to save the estate
22 some expense and as made clear if Your Honor will recall we
23 sent out a motion saying we're going to assume and assign
24 all these contracts to the buyer -- to the stalking horse at
25 that time and give notice to you, which we did file on the

1 docket, that if there was a higher or better bid that it
2 would be -- that you would be assumed and assigned to those.

3 All parties had an obligation to come in, one to
4 do the cure amounts so we got those cure objections, and
5 two, Your Honor will recall that this is -- today is the
6 date and time for people to object to the adequate assurance
7 to be provided by a bidder other than the stalking horse.

8 What we have proposed in the order is to do a
9 mechanism where they can come in, we'll give them notice of
10 the assumption and assignment on this maybe clause, they
11 will have ten days to object, if they have ten days to
12 object we can come into the Court and have that objection
13 resolved instead of doing one by one motions with respect to
14 these parties.

15 THE COURT: All right. There's no reason to
16 calendar anything for September 13th.

17 MR. GALARDI: And that's fine, Your Honor, I just
18 didn't -- I don't where to leave it in limbo land because
19 they do have the objection, it's on the maybe list. We'll
20 certainly take it off the calendar and then just have it
21 fall into the procedure.

22 THE COURT: Well if you see something that
23 generates a dispute they can write a letter or you can write
24 a letter and we'll put it on the calendar.

25 MR. GALARDI: And that's fine, Your Honor. We

1 will take it off the calendar and not schedule it for the
2 13th.

3 Your Honor, I can -- we would ask Your Honor
4 obviously to approve the sale. I can also run through
5 various changes to the sale order that we have provided. I
6 don't know if Your Honor has questions about the sale.

7 THE COURT: Let me ask if anybody wants to be
8 heard in connection with the sale application. Let the
9 record reflect there's no response. Go ahead.

10 MR. GALARDI: Okay. Your Honor, let me hand up a
11 blackline of the order. Your Honor, may I approach?

12 THE COURT: Thank you. This is blacklined off of
13 the revised order that you --

14 MR. GALARDI: Yes, Your Honor. We filed on I
15 think it was Tuesday morning prior to the auction we filed a
16 -- and I can certainly hand up a composite if you would like
17 to go through that.

18 MR. GALARDI: No, the order that was in your loose
19 leaf was document number 179, 180?

20 MR. GALARDI: Yes, and that's -- that is -- this
21 is blackline to that one, Your Honor.

22 THE COURT: Okay. I am correct.

23 MR. GALARDI: Yes, it's blacklined to that.

24 Your Honor will notice in that blackline, and I
25 think -- and I was going to highlight it to Your Honor,

1 there weren't very many changes in that order -- well there
2 were many from the beginning because both the stalking horse
3 bidder and we heard Your Honor to say you had a lot of
4 provisions that were redundant so we tried to clear up all
5 those redundancies.

6 Now, with respect -- and then what we did was give
7 each of the bidders prior to the auction and actually the
8 night before the auction the form of the order so we knew we
9 could resolve whatever objections they may have to the form
10 of the order.

11 So what you have in front of Your Honor is the
12 changes from I think it's the August 16th morning order to
13 reflect that Qumoto (ph) is the highest and otherwise best
14 bid, and as I walk through some of the changes you'll see
15 the ways in which we did it.

16 First you'll see a new finding has been stricken
17 that there was -- you know, that we did in fact receive
18 qualified bids so that finding would no longer apply. We
19 had received it.

20 Your Honor will notice on page 12 of my blackline
21 finding (W) since we are no longer assuming a prepetition
22 agreement we changed the order to provide that it's not an
23 assumption but we are authorized to enter into the APA and
24 so we didn't have to have the reference to Section 365.

25 Your Honor will notice, and I think this is

1 important, in findings under the compelling circumstances
2 we've stricken the words "for an immediate sale" and it's a
3 compelling circumstances for the sale. The findings
4 stricken throughout this --

5 THE COURT: You don't have to show compelling
6 circumstances, you just have to show appropriate business
7 justification.

8 MR. GALARDI: But, Your Honor, one of the things
9 that the original order was asking for was to modify so we
10 didn't have to wait 14 days for the stay. So that --

11 THE COURT: Well that's a different issue.

12 MR. GALARDI: -- we're not going that.

13 THE COURT: You can ask to waive the stay.

14 MR. GALARDI: Now we're not asking to waive the
15 stay. We had with the stalking horse bidder and that was in
16 that order, so part of these provisions were to give
17 findings so that we could waive the stay. We're no longer
18 asking for a waiver of the stay, so this change was part of
19 the reasons why we wanted to make that clear.

20 Your Honor, the other -- and these are the most
21 changes, and this goes to the procedures that I was
22 referring to before. On page 22 in finding 22 of the
23 blackline there are clarifications about when we will send
24 the order approving this transaction, should Your Honor
25 approve it, and the notices with respect to the closing

1 designated contract lists which will tell people that they
2 are in fact having that the specific contracts are being
3 assumed on the closing.

4 And paragraphs 22 and 23 really address those
5 provisions.

6 Paragraph 32 sets forth the part about the
7 procedure where parties who received these notices in the
8 post-closing designation, which is any contract that I've
9 referred to as the maybe that gets assumed, here are the
10 procedures that give them notice to come into the Court and
11 object to that assumption.

12 I would highlight, because it was a committee
13 provision but it's not black lined in this. If Your Honor
14 would turn to page 31 of the blackline, paragraph 39 I do
15 want to call out, and this goes to the allocation issues and
16 concerns with respect to the process.

17 As Your Honor heard from the testimony the debtors
18 believe that upon the closing of this transaction they will
19 have paid all claims, all liens on their assets, so it will
20 have unencumbered assets.

21 Both sides, the committee and the debtors, are
22 concerned about the operational expenses and how the money
23 gets spent because there's a lot of money. This is our
24 agreement with the committee that we will provide them with
25 a post-closing budget, they will have the rights to object

1 to that budget, have rights to object to the expenditures,
2 but we're going to try to work through the process for the
3 budgets and how the monies are going to be expended. So I
4 did want to call that provision out. That was negotiated
5 with the committee.

6 THE COURT: Other than litigation expenses going
7 forward what kind of expenses will there be?

8 MR. GALARDI: There's not going to be very much,
9 Your Honor, other than reports, and again, there's the lease
10 issue to get done as fast as possible, there may be a few
11 operational as -- but there's not going to be -- other than
12 "the litigation" and the filing of a plan and potential
13 litigation with respect to the allocation of the proceeds
14 there's not any real operating expenses to be paid.

15 THE COURT: Who's going to be running the debtor
16 day-to-day? Who will you report to?

17 MR. GALARDI: I report -- I will report to
18 Mr. Holden, and depending upon how all of the offers go
19 there's a transition service agreement, but Mr. Holden will
20 be assuming the positions. And again, all of this is
21 somewhat in flux because the sale and the offers of
22 employment have not been determined and how that will all
23 work.

24 But again, I think that's one of the issues for
25 the operators budget, that's why we put in exactly the

1 paragraph about discussing the post-closing operating
2 budget.

3 Your Honor, with respect to page 32 of the
4 blackline paragraph 42 I mentioned in the presentation one
5 of the changes was about Kinja, it's continuing viability or
6 its continuing to be a company until the bankruptcy and the
7 allocation issues are addressed. Paragraph 42 is really to
8 address that paragraph.

9 There are -- there's a solvency rep about Kinja,
10 there are -- there's an obligation for that account that
11 Mr. Holden described to make available up to \$2 million, we
12 don't think there's very much there. We don't think there
13 is much to pay if there is anything to pay. But we had to
14 do this at the very last minute, and this was the
15 committees' recommendation that they're not bound by certain
16 of those findings. Again, nobody wants to be prejudiced in
17 a subsequent allocation fight which is determining it.

18 Your Honor, paragraph 43, unfortunately we have
19 not yet gotten a name for the company as is common, so we
20 just put it in the form of that. We will within the next
21 week get a name for the liquidating entity. The buyer has
22 in fact taken the name and so we will have an obligation to
23 in fact change that.

24 And finally, Your Honor, again some findings at
25 the very end with respect to the stay (indiscernible) since

1 we are not seeking a stay of the 14-day time period.

2 THE COURT: All right. Does anyone want to be
3 heard with respect to the order?

4 Let me go through some of the questions.

5 MR. GALARDI: Is it easier to go to the prior
6 order, Your Honor?

7 THE COURT: It's the one I worked with was
8 document 179, and ultimately I'll ask you to blackline all
9 the changes off of 179, okay?

10 MR. GALARDI: Okay.

11 THE COURT: The first thing I mentioned is you
12 should have a definition of adverse interest in the order so
13 people don't have to --

14 MR. GALARDI: Absolutely.

15 THE COURT: -- find the APA.

16 And then notwithstanding your effort to avoid
17 redundancy there's a lot of -- still a lot of redundancy in
18 the order. You have conclusions of law and the findings of
19 fact section, et cetera, et cetera.

20 The findings of fact are very straightforward.
21 It's in the corporate exercise of business judgment. The
22 bid is the highest and best offer. There was a competitive
23 bidding. You don't need a lot. Buyer is a good faith
24 buyer.

25 You have a finding in here that the buyer is not

1 holding itself out to the public as a continuation of the
2 debtor's or respected estates. I don't know that. There's
3 no evidence as to that.

4 (Q) you say the buyer shall have no obligations
5 with respect to any adverse interests against the debtor, et
6 cetera. That's just another no successor liability
7 provision. How many times does it have to be in here?

8 (R) is not a finding of fact.

9 (S) the second sentence is not a finding of fact.
10 And it's all in the conclusions also.

11 With respect to satisfying Section 363 all you
12 have to say is that the sale price exceeds the amount of any
13 alleged liens and satisfies 363(f), but the actual evidence
14 is that it just exceeds the amount of the liens. And then
15 the conclusion is you've satisfied 363(f).

16 (W) just repeats what preceded it.

17 Getting to the order we're talking about paragraph
18 2 on page 13, I'm not overruling reservations of rights with
19 prejudice. You know, if the argument is that content which
20 remains on the website post-closing is a separate tort
21 that's an issue between the buyer and aggrieved party or the
22 allegedly aggrieved party.

23 In paragraph 11 you have the usual provision about
24 recording officers are supposed to accept the document.
25 That is of course -- nothing in that grants relief from any

1 of the required filing fees. So if there's a liquidation
2 fee that's got to be paid. That should be clear. It's
3 without prejudice so the filing fees under applicable non-
4 bankruptcy law.

5 Your successor liability provision in 16 is
6 inconsistent with your successor liability provision in
7 paragraph (O). Paragraph (O) just says that the
8 consummation of the transaction doesn't make them a
9 successor, and paragraph 16 says, "Any action taken in
10 connection with the APA or the operational use of the
11 acquired assets doesn't make them a successor." I don't
12 know how I could say that. I don't know what's going happen
13 in the future. What if they say we're the same old Gawker?
14 You know, so it's the consummation of the transaction which
15 doesn't render them a successor.

16 Paragraph 19 at the very end you have these -- all
17 these clauses about what parties can't do. It says parties
18 can't take any action relating to, revoking, terminating, or
19 failing or refusing to renew any license, permit, or
20 authorization to operate any of the acquired assets or
21 conduct any of the businesses operated of such assets. What
22 if five years from now a licensor has the right not to renew
23 a license, the license runs its term, you may they have to
24 renew it?

25 MR. GALARDI: Your Honor, we can obvious qualify

1 that to obviously subject to their contract rights or their
2 rights under law.

3 THE COURT: Paragraph 24 you talk about the
4 executory contracts and unexpired leases being assumed and
5 assigned free and clear. How do you assume and assign under
6 Section 365 free and clear?

7 MR. GALARDI: Well that's why 363 sometimes there
8 are --

9 THE COURT: Oh, I know you're putting 363 in
10 there, but it's an assumption and assignment 365.

11 MR. GALARDI: Well but there are instances -- and
12 now I've got to try to think of -- of some people that tried
13 to put rights or foreclose on -- contractual rights, and I
14 still believe when you're selling a contract right you can
15 still sell that contract right. I mean you can assume and
16 assign that contract and do that free and clear of liens
17 such as security interests in the intangibles.

18 THE COURT: So how do you adequately protect the
19 interests of those --

20 MR. GALARDI: Proceeds. The proceeds of the sale.
21 Those liens are all attaching to the proceeds.

22 THE COURT: But these aren't necessarily dollar
23 rights. For example, if the debtor was a landlord and sold
24 a lease free and clear the tenant would be entitled to
25 adequate protection, right?

1 MR. GALARDI: If the debtor sold -- if the debtor
2 was a landlord --

3 THE COURT: Debtor was a landlord --

4 MR. GALARDI: Yes. Yes. Yes.

5 THE COURT: Okay. So what's the adequate
6 protection, a comparable lease I assume. So you'd have to
7 move them to a comparable space.

8 Look, if -- you know, I see this all the time and
9 I know Judge Ecton (ph) has written an opinion on the
10 relationship between 365(h) I guess and 363(d). If nobody
11 is going to object to that, I'm not going to press it, but I
12 always have that question. I think 365(h) relates to the
13 assumptions and assignments, notwithstanding (indiscernible)
14 or any of those ones.

15 MR. GALARDI: But (h) is a different circumstance,
16 right? I mean this one is they may have a claim against
17 that contract, they've been in notice. I'm not sure that it
18 necessarily attaches. I understand your -- it's not a -- it
19 might not be a monetary, but --

20 THE COURT: But let me move on to --

21 MR. GALARDI: Okay.

22 THE COURT: -- paragraph 35.

23 MR. GALARDI: Okay. 35?

24 THE COURT: Yes.

25 MR. GALARDI: Eleven more, that's good.

1 THE COURT: Those are the releases. You have
2 possibly unborn people giving releases to unborn people.
3 Where's the authority for that? Even as to those releasors
4 that are living, where is the evidence that you or anybody
5 has authority to give those releases? You can give releases
6 on behalf of the debtor and Unimoda can give releases on
7 behalf of Unimoda, but --

8 MR. GALARDI: But you could --

9 THE COURT: Wait, let me finish. You have present
10 and future subsidiaries, parents, divisions, affiliates,
11 agents, representatives, insurers, attorneys, successors,
12 and so on they're giving releases. What's the -- where's
13 the authority to do that?

14 MR. GALARDI: Your Honor, again, we will revise
15 it. I think it's broader than because of the notice
16 provision --

17 THE COURT: Why don't you say that to the
18 extent --

19 MR. GALARDI: -- applicable.

20 THE COURT: -- you have the authority to give
21 releases --

22 MR. GALARDI: Yep.

23 THE COURT: -- you are giving releases, and
24 they're only on claims -- I assume these are not third-party
25 releases of independent claims are they?

1 MR. GALARDI: No, they're not.

2 THE COURT: So essentially you're releasing your
3 claims and you can bring a derivative claim now or in the
4 future with respect to estate claims.

5 MR. GALARDI: So to the fullest estate permitted
6 by law --

7 THE COURT: Right.

8 MR. GALARDI: -- is really the way we put it.

9 THE COURT: And to the extent you have authority.

10 MR. GALARDI: And to the extent --

11 THE COURT: Those are my only comments.

12 With respect to the question of the sale I'll
13 approve the sale subject to the changes in the order.

14 Based upon the evidence it's clear that the assets
15 were accurately marketed, that the period for rendering the
16 bids was sufficient. I think there was testimony that
17 nobody said they needed more time. There was an auction,
18 and an auction is the best evidence of what the market price
19 of an asset is.

20 The Univision bid is the highest and best bid not
21 by that much because of the break-up fee and the expense
22 reimbursement, it's by about \$300,000, by my count, but it's
23 still higher, and therefore better since they're -- we're
24 talking about cash bids.

25 MR. GALARDI: Your Honor, if I may just address

1 that point --

2 THE COURT: Sure.

3 MR. GALARDI: -- because again, I know we're not
4 clear about that. We had a long discuss with Mr. Torkin.
5 When we were saying he was bidding, for example, that 131,
6 he was actually bidding cash to the estate of 131 minus 375.
7 That --

8 THE COURT: That makes no sense. That's why, you
9 know, when these bid procedures came up and I had it twice
10 today in other cases, it makes no sense to say that a
11 stalking horse can credit bid, because a stalking horse
12 doesn't have a credit bid if it's the winning bidder.

13 MR. GALARDI: Let me look at -- I understand, Your
14 Honor.

15 THE COURT: So you're saying he was bidding 127?

16 MR. GALARDI: That is the understanding because he
17 was bidding the dollars to the estate. But, Your Honor, I
18 understand -- again --

19 THE COURT: You've convinced me of why I object to
20 those provisions.

21 MR. GALARDI: I understand, because we have this -
22 - and the funny thing is we had this conversation on --

23 THE COURT: I've had it twice this morning in
24 other cases.

25 MR. GALARDI: I'm sure as my former firm and

1 another firm, so I understand.

2 THE COURT: Your former firm was involved.

3 (Laughter)

4 MR. GALARDI: So we all learned the bad habit.

5 THE COURT: They copied it from you I guess.

6 MR. GALARDI: Maybe, I was there when they started
7 that, but I understand.

8 So I'll change it in the future, Your Honor, but
9 whether it was 300 I think our view it was a little higher,
10 but -- net value to the estate, but I understand your
11 comments.

12 THE COURT: Well in any event regardless of how we
13 interpret that credit provision Univision offers a bid it's
14 still higher and better by at least \$300,000 and you're
15 telling me \$4 million, although I don't know.

16 Each of the bids is beneficial to the existing
17 employees, there's a commitment to make offers to 95 percent
18 of the employees.

19 Based upon the testimony of Mr. Holden, while this
20 is not a melting ice cube, the asset is declining in value,
21 its faces defections of employees, loss of advertising
22 income.

23 And for those reasons, as well as the litigation
24 exposure -- although the only plan now is a liquidating plan
25 -- the debtor never really had a chance at a stand-alone

1 plan with all this litigation and the uncertainty that
2 surrounded it. So yes, theoretically the sale does
3 foreclose a stand-alone plan, but that was never really a
4 real possibility giving the facts and circumstances of the
5 case.

6 So I'm satisfied -- or I find that you've
7 satisfied the Lyondell standards, that the sale was
8 substantially one of the assets outside of the ordinary
9 course of business, that the sale is an appropriate exercise
10 of business judgment, that the price is fair and reasonable,
11 and that the debtor has provided -- the debtors have
12 provided an appropriate business justification for the sale
13 at this time.

14 So subject to the changes in the order, which I
15 will go through and strike out all the redundant provisions,
16 I'm telling Univision now that it'll probably be a ten-page
17 order by the time I'm done, I'll approve the transaction.

18 MR. GALARDI: And we will do the best we can to
19 strike them out before we get to you, Your Honor, but I
20 appreciate it and I appreciate your time today, and I know
21 it's been a long time.

22 Thank you, Your Honor.

23 THE COURT: Good luck. Thank you very much.

24 MR. GALARDI: Thank you.

25 (Whereupon these proceedings were concluded at 3:48 PM)

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Dawn South

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AAERT Certified Electronic Transcriber CET**D-408

Date: August 22, 2016

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